



ARKANSAS JUDICIARY

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Rule 54(B) Certificate

With respect to the issues determined by the above judgment, the court finds:

[Set forth specific factual findings.]

Upon the basis of the foregoing factual findings, the court hereby certifies, in accordance with Rule 54(b)(1), Ark. R. Civ. P., that it has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the judgment shall be a final judgment for all purposes.

Certified this _____ day of _____, _____.

Judge

(2) Lack of Certification. Absent the executed certificate required by paragraph (1) of this subdivision, any judgment, order, or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the judgment, order, or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all of the parties.

(3) Review of Finality. The finality of a judgment, order, or other form of decision containing the certificate required by paragraph (1) of this subdivision may be reviewed only pursuant to a timely notice of appeal filed in accordance with Rule 4, Ark. R. App. P. - Civ.

(4) Retention of Jurisdiction. An appeal of a judgment, order, or other form of decision containing the certificate required by paragraph (1) of this subdivision shall not affect the trial court's jurisdiction over other claims or parties.

(5) Named but Unserved Defendant. Any claim against a named but unserved defendant, including a ?John Doe? defendant, is dismissed by the circuit court?s final judgment or decree.

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

(d) Costs.

(1) Costs shall be allowed to the prevailing party if the court so directs, unless a statute or rule makes an award mandatory.

(2) (2) Costs taxable under this rule are limited to the following: filing fees and other fees charged by the clerk; fees for service of process and subpoenas; fees for the publication of

warning orders and other notices; fees for interpreters appointed under Rule 43; witness fees and mileage allowances as provided in Rule 45; fees of a master appointed pursuant to Rule 53; fees of experts appointed by the court pursuant to Rule 706 of the Arkansas Rules of Evidence; fees of translators appointed by the court pursuant to Rule 1009 of the Arkansas Rules of Evidence; and expenses, excluding attorney's fees, specifically authorized by statute to be taxed as costs.

(e) Attorneys' Fees. (1) Claims for attorneys' fees and related nontaxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial.

(2) Unless otherwise provided by statute or order of the court, the motion must be filed and served no later than 14 days after entry of judgment; must specify the judgment and the statute or rule entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the court, the motion, shall also disclose the terms of any agreement with respect to fees to be paid for the services for which the claim is made.

(3) On request of a party or class member, the court shall afford an opportunity for adversary submissions with respect to the motion in accordance with Rule 43(c) or Rule 78. The court may determine issues of liability for fees before receiving submissions bearing on issues of evaluation of services for which liability is imposed by the court. The court shall find the facts and state its conclusions of law, and a judgment shall be set forth in a separate document as provided in Rule 58.

(4) The court may refer issues relating to the value of services to a special master under Rule 53 without regard to the provisions of subdivision (b) thereof.

(5) The provisions of subparagraphs (1) through (4) do not apply to claims for fees and expenses as sanctions for violations of these rules.

Reporter's Notes to Rule 54: - 1. With exception of the changes in Section (c), Rule 54 is otherwise identical to FRCP 54.

2. Under FRCP 54(b), the practice is to wait until all claims have been finally determined before entering judgment on any particular claim. The purpose is to prevent piecemeal appeals while portions of the litigation remain unresolved. There may be situations, however, where a particular claim should be finally determined before the entire case is concluded. Accordingly, the trial court may direct the entry of a final judgment on fewer than all claims involved upon the express determination that there is no good reason for delay. Thus, a party will always know whether a judgment in a Rule 54(b) situation is ripe for appeal. Unless this determination has been made by the trial court, there can be no appeal. *RePass v. Vreeland*, 357 F. 2d 801 (C.C.A. 3rd, 1966); *Oak Construction Co. v. Huron Cement Co.*, 475 F. 2d 1220 (C.C.A. 6th, 1973).

3. Section (c) formulates the standard that except for default judgments, the form of relief and nature of the order are to be determined by what the facts establish as opposed to what counsel has pleaded. *South Falls Corp. v. Rochelle*, 329 F. 2d 611 (C.C.A. 5th, 1964); *Molnar v. Gulfcoast Transit Co.*, 371 F. 2d 639 (C.C.A. 5th, 1967). With reference to default judgments, however, the first sentence of Section (c) expressly provides that relief may not be different in kind or amount from that prayed for by the claimant.

4. Section (d) contains the only changes from FRCP 54. It removes the power contained in the Federal Rule for the clerk to tax costs and leaves such power with the trial judge as under prior Arkansas law. Unless otherwise ordered by the trial judge, costs are taxed against the losing party as was the case under superseded Ark. Stat. Ann. 27-2308, 27-2310 and 27-

2312 (Repl. 1962).

Addition to Reporter's Note, 1992 Amendment: - The first sentence of Rule 54(b) is amended to expressly state the trial court's obligation to make findings of fact with respect to the required determination that there is "no just reason for delay" for the entry of judgment. The amendment reflects the Supreme Court's holding to that effect in *Franklin v. Osca, Inc.*, 308 Ark. 409, 825 S.W.2d 812 (1992) (trial court "must factually set forth reasons ... explaining why a hardship or injustice would result if an appeal is not permitted").

Addition to Reporter's Notes, 1994 Amendment: - Subdivision (d) of the rule is rewritten for purposes of clarity. No substantive change is intended. The original version of the rule was awkward and led to confusion. See, e.g., *Wood v. Tyler*, 317 Ark. 319, 877 S.W.2d 582 (1994).

Addition to Reporter's Notes, 1997 Amendment: - New subdivision (e) establishes a procedure for presenting claims for attorney's fees, a frequently recurring form of litigation not initially contemplated by the rules. It is based on federal Rule 54(d)(2), as amended in 1993.

Paragraph (1) makes plain that the subdivision does not apply to attorneys' fees recoverable as an element of damages, as when sought under the terms of a contract. Such damages typically are to be claimed in a pleading and may involve issues to be resolved by a jury. Paragraph (2) provides a deadline for motions for attorneys' fees - 14 days after final judgment unless the court or a statute specifies some other time. Prior law did not prescribe any specific time limit on claims for attorneys' fees. See *Marsh & McLennan v. Herget*, 321 Ark. 180, 900 S.W.2d 195 (1995).

One purpose of this provision is to assure that the opposing party is informed of the claim before the time for appeal has elapsed. Prompt filing affords an opportunity for the court to resolve fee disputes shortly after trial, while the services performed are freshly in mind. It also enables the court in appropriate cases to make its ruling on a fee request in time for any appellate review of a dispute over fees to proceed at the same time as review on the merits.

Filing a motion for fees under subdivision (e) does not affect the finality or appealability of a judgment. If an appeal on the merits of the case is taken, the court may rule on the claim for fees, defer its ruling on the motion, or deny the motion without prejudice and direct under paragraph (2) a new period for filing after the appeal has been resolved. A notice of appeal does not extend the time for filing a fee claim based on the initial judgment, but the court may effectively extend the period by permitting claims to be filed after resolution of the appeal. A new period for filing will automatically begin if a new judgment is entered following a reversal or remand by the appellate court or the granting of a motion under Rule 59.

The new subdivision does not require that the motion for attorneys' fees be supported at the time of filing with the evidentiary material bearing on the fees. This material must be submitted in due course, according to such schedule as the court may direct in light of the circumstances of the case. What is required is the filing of a motion sufficient to alert the adversary and the court that there is a claim for fees and the amount of such fees or a fair estimate.

If directed by the court, the moving party is required to disclose any fee agreement, including those between attorney and client, between attorneys sharing a fee to be awarded, and between adversaries made in partial settlement of a dispute where the settlement must be

implemented by court action, as required by Rule 23 and similar provisions. This subdivision does not affect the practice in class action cases whereby claims for fees are presented in advance of hearings to consider approval of the proposed settlement, since the court is permitted to require submissions of fee claims in advance of the entry of judgment.

Paragraph (3) assures the parties of an opportunity to make an appropriate presentation with respect to issues involving the evaluation of legal services. In some cases, an evidentiary hearing may be needed, but this is not required in every case. The amount of time to be allowed for the preparation of submissions both in support of and in opposition to awards should be tailored to the particular case. The court is expressly authorized to make a determination of the liability for fees before receiving submissions by the parties bearing on the amount of an award. This option may be appropriate in actions in which the liability issue is doubtful and the evaluation issues are numerous and complex.

The court may order disclosure of additional information, such as that bearing on prevailing local rates or on the appropriateness of particular services for which compensation is sought. On rare occasion, the court may determine that discovery would be useful to the parties. Fee awards should be made in the form of a separate judgment under Rule 58 since such awards are subject to appellate review. To facilitate such review, paragraph (3) requires the court to set forth its findings of fact and conclusions of law. It is anticipated that this explanation will be quite brief in most cases.

Paragraph (4) authorizes the court to refer issues regarding the amount of a fee to a master under Rule 53. This authorization eliminates any controversy as to whether such references are permitted under Rule 53(b) as "matters of account and difficult computation of damages." Paragraph (5) excludes from this rule the award of fees as sanctions for violations of these rules.

Addition to Reporter's Notes, 1999 Amendment: - A new paragraph has been added to subdivision (d) defining the term "costs." A definition was deemed advisable in light of continuing confusion as to expenses that can be taxed as costs. See, e.g., *Wood v. Tyler*, 317 Ark. 319, 877 S.W.2d 582 (1994); *Sutton v. Ryder Truck Rental, Inc.*, 305 Ark. 231, 807 S.W.2d 905 (1991).

Addition to Reporter's Notes, 2001 Amendment: - Rule 54(b) has caused problems for lawyers and judges alike. See generally *Watkins*, *The Mysteries of Rule 54(b)*, 1996 Ark. L. Notes 117. Although subdivision (b) has not been radically altered, the revisions are intended to emphasize the steps that must be taken to secure immediate appellate review. The subdivision has been divided into four numbered paragraphs, and the most significant change is the trial court's certificate required by paragraph (1). By virtue of paragraph (2), the absence of the certificate means that a final portion of a case involving multiple parties or claims is not immediately appealable. Except for requiring a certificate and setting out its form, paragraph (1) differs little from the first sentence of the prior version of subdivision (b). Similarly, paragraph (2) largely tracks the second sentence but has been amended to refer to the certificate. Paragraphs (3) and (4) are new but do not work any change in the law.

History Text:

History. Amended September 28, 1992, effective January 1, 1993; amended December 5, 1994, effective January 15, 1995; amended November 18, 1996, effective March 1, 1997; amended January 28, 1999; amended February 1, 2001

Associated Court Rules:

Rules of Civil Procedure

Group Title:

VII. Judgment

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